

Senate Study Bill 1073

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT
OF ELDER AFFAIRS BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of adult day services and
2 assisted living programs, providing an appropriation and
3 penalties, and providing a contingent effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1205DP 80
6 pf/cl/14

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1 1 Section 1. NEW SECTION. 231D.1 DEFINITIONS.
1 2 For the purposes of this chapter, unless the context
1 3 otherwise requires:
1 4 1. "Adult day services", "adult day services program", or
1 5 "program" means an organized program providing a variety of
1 6 health, social, and related support services for sixteen hours
1 7 or less in a twenty-four-hour period to persons with a
1 8 functional impairment on a regularly scheduled, contractual
1 9 basis.
1 10 2. "Functional impairment" means a psychological,
1 11 cognitive, or physical impairment creating the inability to
1 12 perform personal and instrumental activities of daily living
1 13 and associated tasks necessitating some form of supervision or
1 14 assistance or both.
1 15 3. "Governmental unit" means the state, or any county,
1 16 municipality, or other political subdivision or any
1 17 department, division, board, or other agency of any of these
1 18 entities.
1 19 4. "Nursing care" means services which are required to be
1 20 provided only under the direction of a registered nurse or a
1 21 licensed practical nurse.
1 22 5. "Recognized accrediting entity" means a nationally
1 23 recognized accrediting entity that the department of elder
1 24 affairs, in cooperation with the department of inspections and
1 25 appeals, recognizes as having specific adult day services
1 26 program standards equivalent to the standards established by
1 27 the department of elder affairs, in cooperation with the
1 28 department of inspections and appeals, for adult day services.
1 29 6. "Social services" means services relating to the
1 30 psychological and social needs of the individual in adjusting
1 31 to participating in an adult day services program, and
1 32 minimizing the stress arising from that circumstance.
1 33 7. "Supervision" means direct oversight and inspection of
1 34 the act of accomplishing a function or activity.
1 35 Sec. 2. NEW SECTION. 231D.2 PURPOSE == RULES == SPECIAL
2 1 CLASSIFICATIONS.
2 2 1. The purpose of this chapter is to promote and encourage
2 3 adequate and safe care for adults with functional impairments.
2 4 2. The department of elder affairs, in cooperation with
2 5 the department of inspections and appeals, shall establish, by
2 6 rule in accordance with chapter 17A, a program for
2 7 certification and monitoring of and complaint investigations
2 8 related to adult day services programs. The department of
2 9 elder affairs, in cooperation with the department of
2 10 inspections and appeals, in establishing standards for adult
2 11 day services programs, may adopt by rule in accordance with
2 12 chapter 17A, nationally recognized standards for adult day
2 13 services programs. The rules shall include specification of
2 14 recognized accrediting entities. The rules and standards
2 15 adopted shall be formulated in consultation with affected
2 16 industry, professional, and consumer groups and shall be
2 17 designed to accomplish the purpose of this chapter.
2 18 3. The department of elder affairs, in cooperation with
2 19 the department of inspections and appeals, may establish by
2 20 administrative rule special classifications for adult day
2 21 services providers. The department of inspections and appeals
2 22 shall issue separate certificates for each special

classification for which a provider is certified.

Sec. 3. NEW SECTION. 231D.3 CERTIFICATION REQUIRED.

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate an adult day services program and shall not represent an adult day services program to the public as certified unless and until the program is certified pursuant to this chapter. If an adult day services program is voluntarily accredited by a recognized accrediting entity with specific adult day services standards, the department of inspections and appeals shall accept voluntary accreditation as the basis for certification by the department. The owner or manager of a certified adult day services program shall comply with the rules adopted by the department of elder affairs, in cooperation with the department of inspections and appeals, for an adult day services program.

2. An adult day services program may provide any type of adult day services for which the program is certified, including any special classification of adult day services. An adult day services program shall provide services and supervision commensurate with the needs of the recipients. An adult day services program shall not provide services to individuals requiring a level or type of services for which the program is not certified and services provided shall not exceed the level or type of services for which the program is certified.

3. An adult day services program that has been certified by the department of inspections and appeals shall not alter the program, operation, or adult day services for which the program is certified in a manner that affects continuing certification without prior approval of the department of inspections and appeals. The department of inspections and appeals shall specify, by rule, alterations that are subject to prior approval.

4. A department, agency, or officer of this state or of any political subdivision shall not pay or approve for payment from public funds any amount to an adult day services program for an actual or prospective recipient, unless the program holds a current certificate issued by the department of inspections and appeals and meets all current requirements for certification.

5. An adult day services program shall not conduct or operate another business or activity within the program without the prior approval of the department of inspections and appeals, if the business or activity serves primarily nonrecipients of adult day services. The department of elder affairs, in cooperation with the department of inspections and appeals, and in accordance with chapter 17A, shall adopt rules which establish criteria for approval of a business or activity to be conducted or operated within the program. The rules shall be developed in consultation with affected industry, professional, and consumer groups.

Sec. 4. NEW SECTION. 231D.4 APPLICATION AND FEES.

1. Certificates for adult day services programs shall be obtained from the department of inspections and appeals. Applications shall be upon such forms and shall include such information as the department of inspections and appeals may reasonably require, which may include affirmative evidence of compliance with applicable statutes and local ordinances. Each application for certification shall be accompanied by the appropriate fee, subject to refund to the applicant if the certification is denied.

2. The department of elder affairs, in cooperation with the department of inspections and appeals, shall establish certification fees by rule in accordance with chapter 17A. The department of inspections and appeals shall collect and retain adult day services certification fees. The fees shall be deposited in an adult day services program fund created in the state treasury under the authority of the department of inspections and appeals and are appropriated to the department of inspections and appeals to carry out the purposes of this chapter. Amounts deposited in the fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited into the fund shall be credited to the fund. Notwithstanding section 8.33, amounts deposited in the fund that remain unexpended or unencumbered at the close of the fiscal year shall remain in the fund for utilization as provided in this section for the following fiscal year.

4 34 Sec. 5. NEW SECTION. 231D.5 DENIAL, SUSPENSION, OR
4 35 REVOCATION.

5 1 1. The department of inspections and appeals may deny,
5 2 suspend, or revoke certification if the department of
5 3 inspections and appeals finds that there has been a
5 4 substantial or repeated failure on the part of the adult day
5 5 services program to comply with this chapter or the rules or
5 6 minimum standards adopted pursuant to this chapter, or for any
5 7 of the following reasons:

5 8 a. Cruelty or indifference to adult day services program
5 9 service recipients.

5 10 b. Appropriation or conversion of the property of an adult
5 11 day services programs service recipient without the
5 12 recipient's written consent or the written consent of the
5 13 service recipient's legal guardian.

5 14 c. Permitting, aiding, or abetting the commission of any
5 15 illegal act in the adult day services program.

5 16 d. Obtaining or attempting to obtain or retain
5 17 certification by fraudulent means, misrepresentation, or by
5 18 submitting false information.

5 19 e. Habitual intoxication or addiction to the use of drugs
5 20 by the applicant, owner, manager, or supervisor of the adult
5 21 day services program.

5 22 f. Securing the devise or bequest of the property of a
5 23 recipient of services of an adult day services program by
5 24 undue influence.

5 25 g. Failure or neglect to maintain a continuing education
5 26 and training program for all personnel employed in the adult
5 27 day services program.

5 28 h. Founded dependent adult abuse as defined in section
5 29 235B.2.

5 30 i. For any other reason as provided by law or
5 31 administrative rule.

5 32 2. In the case of an application by an existing
5 33 certificate holder for a new or newly acquired adult day
5 34 services program, continuing or repeated failure of the
5 35 certificate holder to operate any previously certified adult
6 1 day services program in compliance with this chapter or of the
6 2 rules adopted pursuant to this chapter.

6 3 3. In the case of a certificate applicant or existing
6 4 certificate holder which is an entity other than an
6 5 individual, the department of inspections and appeals may
6 6 deny, suspend, or revoke a certificate if any individual who
6 7 is in a position of control or is an officer of the entity
6 8 engages in any act or omission proscribed by this section.

6 9 Sec. 6. NEW SECTION. 231D.6 NOTICE == APPEAL ==
6 10 EMERGENCY PROVISIONS.

6 11 1. The denial, suspension, or revocation of a certificate
6 12 shall be effected by delivering to the applicant or
6 13 certificate holder by restricted certified mail or by personal
6 14 service a notice setting forth the particular reasons for the
6 15 action. The denial, suspension, or revocation shall become
6 16 effective thirty days after the mailing or service of the
6 17 notice, unless the applicant or certificate holder, within the
6 18 thirty-day period, requests a hearing, in writing, of the
6 19 department of inspections and appeals, in which case the
6 20 notice shall be deemed to be suspended.

6 21 2. The denial, suspension, or revocation of a certificate
6 22 may be appealed in accordance with rules adopted by the
6 23 department of inspections and appeals.

6 24 3. When the department of inspections and appeals finds
6 25 that an immediate danger to the health or safety of recipients
6 26 of services from an adult day services program exists which
6 27 requires action on an emergency basis, the department of
6 28 inspections and appeals may direct the removal of all
6 29 recipients of services from an adult day services program and
6 30 suspend the certificate prior to a hearing.

6 31 Sec. 7. NEW SECTION. 231D.7 CONDITIONAL OPERATION.

6 32 The department of inspections and appeals may, as an
6 33 alternative to denial, suspension, or revocation of
6 34 certification under section 231D.5, conditionally issue or
6 35 continue certification dependent upon the performance by the
7 1 adult day services program of reasonable conditions within a
7 2 reasonable period of time as prescribed by the department of
7 3 inspections and appeals so as to permit the program to
7 4 commence or continue the operation of the program pending full
7 5 compliance with this chapter or the rules adopted pursuant to
7 6 this chapter. If the adult day services program does not make
7 7 diligent efforts to comply with the conditions prescribed, the
7 8 department of inspections and appeals may, under the
7 9 proceedings prescribed by this chapter, suspend or revoke the

7 10 certificate. An adult day services program shall not be
7 11 operated under conditional certification for more than one
7 12 year.

7 13 Sec. 8. NEW SECTION. 231D.8 DIRECTOR NOTIFIED OF
7 14 CASUALTIES.

7 15 The director of inspections and appeals shall be notified
7 16 within twenty-four hours, by the most expeditious means
7 17 available, of any accident causing substantial injury or
7 18 death, and any substantial fire or natural or other disaster
7 19 occurring at or near an adult day services program.

7 20 Sec. 9. NEW SECTION. 231D.9 COMPLAINTS AND
7 21 CONFIDENTIALITY.

7 22 1. A person with concerns regarding the operations or
7 23 service delivery of an adult day services program may file a
7 24 complaint with the department of inspections and appeals. The
7 25 name of the person who files a complaint with the department
7 26 of inspections and appeals and any personal identifying
7 27 information of the person or any recipient of program services
7 28 identified in the complaint shall be kept confidential and
7 29 shall not be subject to discovery, subpoena, or other means of
7 30 legal compulsion for its release to a person other than
7 31 employees of the department of inspections and appeals
7 32 involved in the investigation of the complaint.

7 33 2. The department of elder affairs, in cooperation with
7 34 the department of inspections and appeals, shall establish
7 35 procedures for the disposition of complaints received in
8 1 accordance with this section.

8 2 Sec. 10. NEW SECTION. 231D.10 PUBLIC DISCLOSURE OF
8 3 FINDINGS.

8 4 Following a monitoring evaluation or complaint
8 5 investigation of an adult day services program by the
8 6 department of inspections and appeals pursuant to this
8 7 chapter, the department's final findings with respect to
8 8 compliance by the adult day services program with requirements
8 9 for certification shall be made available to the public in a
8 10 readily available form and place. Other information relating
8 11 to an adult day services program that is obtained by the
8 12 department of inspections and appeals which does not
8 13 constitute the department's final findings from a monitoring
8 14 evaluation or complaint investigation of the adult day
8 15 services program shall not be made available to the public
8 16 except in proceedings involving the denial, suspension, or
8 17 revocation of a certificate under this chapter.

8 18 Sec. 11. NEW SECTION. 231D.11 PENALTIES.

8 19 1. A person establishing, conducting, managing, or
8 20 operating an adult day services program without a certificate
8 21 is guilty of a serious misdemeanor. Each day of continuing
8 22 violation after conviction or notice from the department of
8 23 inspections and appeals by certified mail of a violation shall
8 24 be considered a separate offense or chargeable offense. A
8 25 person establishing, conducting, managing, or operating a
8 26 adult day services program without a certificate may be
8 27 temporarily or permanently restrained by a court of competent
8 28 jurisdiction from such activity in an action brought by the
8 29 state.

8 30 2. A person who prevents or interferes with or attempts to
8 31 impede in any way any duly authorized representative of the
8 32 department of inspections and appeals in the lawful
8 33 enforcement of this chapter or of the rules adopted pursuant
8 34 to this chapter is guilty of a simple misdemeanor. As used in
8 35 this subsection, lawful enforcement includes but is not

9 1 limited to:

9 2 a. Contacting or interviewing any participant of an adult
9 3 day services program in private at any reasonable hour and
9 4 without advance notice.

9 5 b. Examining any relevant records of an adult day services
9 6 program.

9 7 c. Preserving evidence of any violation of this chapter or
9 8 of the rules adopted pursuant to this chapter.

9 9 3. A civil penalty, as established by rule, may apply in
9 10 any of the following situations:

9 11 a. Program noncompliance with one or more regulatory
9 12 requirements has caused or is likely to cause harm, serious
9 13 injury, threat, or death to a recipient of program services.

9 14 b. Program failure or refusal to comply with regulatory
9 15 requirements within prescribed time frames.

9 16 Sec. 12. NEW SECTION. 231D.12 RETALIATION BY AN ADULT
9 17 DAY SERVICES PROVIDER PROHIBITED.

9 18 1. An adult day services provider shall not discriminate
9 19 or retaliate in any way against a recipient, recipient's
9 20 family, or an employee of the program who has initiated or

9 21 participated in any proceeding authorized by this chapter. An
9 22 adult day services program that violates this section is
9 23 subject to a penalty as established by administrative rule, to
9 24 be assessed and collected by the department of inspections and
9 25 appeals and paid into the state treasury to be credited to the
9 26 general fund of the state, or to immediate revocation of the
9 27 program's certificate.

9 28 2. Any attempt to discharge a recipient from an adult day
9 29 services program by whom or upon whose behalf a complaint has
9 30 been submitted to the department of inspections and appeals
9 31 under section 231D.9, within ninety days after the filing of
9 32 the complaint or the conclusion of any proceeding resulting
9 33 from the complaint, shall raise a rebuttable presumption that
9 34 the action was taken by the program in retaliation for the
9 35 filing of the complaint, except in situations in which the
10 1 recipient is discharged due to changes in health status which
10 2 exceed the level of care offered by the adult day services
10 3 program.

10 4 Sec. 13. NEW SECTION. 231D.13 NURSING ASSISTANT AND
10 5 MEDICATION AIDE == CERTIFICATION.

10 6 The department of inspections and appeals, in cooperation
10 7 with other appropriate agencies, shall establish a procedure
10 8 to allow nursing assistants or medication aides to deem work
10 9 within adult day services programs as credit toward sustaining
10 10 professional certification.

10 11 Sec. 14. NEW SECTION. 231D.14 CRIMINAL RECORDS
10 12 INVESTIGATION CHECK.

10 13 An adult day services program shall comply with section
10 14 135C.33.

10 15 Sec. 15. NEW SECTION. 231D.15 FIRE AND SAFETY STANDARDS.

10 16 The state fire marshal shall adopt rules, in coordination
10 17 with the department of inspections and appeals, relating to
10 18 the certification and monitoring of the fire and safety
10 19 standards of adult day services programs.

10 20 Sec. 16. NEW SECTION. 231D.16 TRANSITION PROVISIONS.

10 21 Adult day service programs existing prior to July 1, 2003,
10 22 shall comply with this chapter by June 30, 2004.

10 23 Sec. 17. Section 100.1, subsection 6, Code 2003, is
10 24 amended to read as follows:

10 25 6. To adopt rules designating a fee to be assessed to each
10 26 building, structure, or facility for which a fire safety
10 27 inspection or plan review by the state fire marshal is
10 28 required ~~as a condition of licensure by law.~~ The fee

10 29 designated by rule shall be set in an amount that is
10 30 reasonably related to the costs of conducting the applicable
10 31 inspection or plan review. The fees collected by the state
10 32 fire marshal shall be retained by the state fire marshal and

10 33 deposited in the general a separate fund of created in the
10 34 state treasury under the authority of the state fire marshal

10 35 and are appropriated to the state fire marshal to carry out
11 1 the purpose of this subsection. Amounts deposited in the fund

11 2 shall not be transferred, used, obligated, appropriated, or
11 3 otherwise encumbered, except as provided in this subsection.

11 4 Notwithstanding section 12C.7, subsection 2, interest or
11 5 earnings on moneys deposited in the fund shall be credited to

11 6 the fund. Notwithstanding section 8.33, amounts deposited in
11 7 the fund that remain unexpended or unencumbered at the close

11 8 of the fiscal year shall remain in the fund for utilization as
11 9 provided in this subsection for the following fiscal year.

11 10 Sec. 18. Section 135C.1, subsection 1, Code 2003, is
11 11 amended to read as follows:

11 12 1. "Adult day services" means adult day services as
11 13 defined in section ~~231.61~~ 231D.1 that are provided in a
11 14 licensed health care facility.

11 15 Sec. 19. Section 231B.1, subsection 2, Code 2003, is
11 16 amended by striking the subsection.

11 17 Sec. 20. Section 231B.2, subsection 1, Code 2003, is
11 18 amended to read as follows:

11 19 1. The department of elder affairs, in cooperation with
11 20 the department of inspections and appeals, shall establish by
11 21 rule in accordance with chapter 17A a special classification
11 22 for elder group homes. An elder group home established
11 23 pursuant to this subsection is exempt from the requirements of
11 24 section 135.63.

11 25 Sec. 21. Section 231B.2, subsection 2, unnumbered
11 26 paragraph 1, Code 2003, is amended to read as follows:

11 27 The department of elder affairs, in cooperation with the
11 28 department of inspections and appeals, shall adopt rules to
11 29 establish requirements for certification of elder group homes.
11 30 The requirements shall include but are not limited to all of
11 31 the following:

11 32 Sec. 22. Section 231B.2, subsections 3 through 5, Code
11 33 2003, are amended to read as follows:
11 34 3. An elder group home established pursuant to this
11 35 chapter shall be certified by the department of inspections
12 1 and appeals.
12 2 4. A provider under the special classification shall
12 3 comply with the rules adopted by the department of elder
12 4 affairs, in cooperation with the department of inspections and
12 5 appeals, for an elder group home.
12 6 5. Inspections and certification services shall be
12 7 provided by the department of inspections and appeals.
12 8 ~~However, beginning July 1, 1994, the department may enter into~~
12 9 ~~contracts with the area agencies on aging to provide these~~
12 10 ~~services.~~
12 11 Sec. 23. Section 231B.3, subsection 2, Code 2003, is
12 12 amended to read as follows:
12 13 2. A person who has knowledge that an elder group home is
12 14 operating without certification shall report the name and
12 15 address of the home to the department of inspections and
12 16 appeals. The department of inspections and appeals shall
12 17 investigate a report made pursuant to this section.
12 18 Sec. 24. Section 231B.4, Code 2003, is amended to read as
12 19 follows:
12 20 231B.4 APPLICABILITY.
12 21 1. This chapter shall not be construed to require that a
12 22 facility, currently licensed or licensed as a different type
12 23 of facility and serving persons sixty years of age or older,
12 24 also comply with the requirements of this chapter.
12 25 2. This chapter shall apply only to those elder group
12 26 homes certified by the department of elder affairs prior to
12 27 July 1, 2003. Applications for certification as an elder
12 28 group home shall not be accepted on or after July 1, 2003.
12 29 Sec. 25. Section 231C.2, subsection 1, Code 2003, is
12 30 amended to read as follows:
12 31 1. "Assisted living" means provision of housing with
12 32 services which may include but are not limited to health=
12 33 related care, personal care, and assistance with instrumental
12 34 activities of daily living to ~~six~~ three or more tenants in a
12 35 physical structure which provides a homelike environment.
13 1 "Assisted living" also includes encouragement of family
13 2 involvement, tenant self-direction, and tenant participation
13 3 in decisions that emphasize choice, dignity, privacy,
13 4 individuality, shared risk, and independence. "Assisted
13 5 living" includes the provision of housing and assistance with
13 6 instrumental activities of daily living only if personal care
13 7 or health-related care is also included.
13 8 Sec. 26. Section 231C.2, subsection 2, Code 2003, is
13 9 amended by striking the subsection.
13 10 Sec. 27. Section 231C.2, Code 2003, is amended by adding
13 11 the following new subsections:
13 12 NEW SUBSECTION. 0A. "Adult day services" means adult day
13 13 services as defined in section 231D.1.
13 14 NEW SUBSECTION. 2A. "Elder group home" means an elder
13 15 group home as defined in section 231B.1.
13 16 NEW SUBSECTION. 2B. "Governmental unit" means the state,
13 17 or any county, municipality, or other political subdivision or
13 18 any department, division, board, or other agency of any of
13 19 these entities.
13 20 NEW SUBSECTION. 5A. "Recognized accrediting entity" means
13 21 a nationally recognized accrediting entity that the department
13 22 of elder affairs, in cooperation with the department of
13 23 inspections and appeals, recognizes as having specific
13 24 assisted living program standards equivalent to the standards
13 25 established by the department of elder affairs, in cooperation
13 26 with the department of inspections and appeals, for assisted
13 27 living programs.
13 28 Sec. 28. Section 231C.3, Code 2003, is amended by striking
13 29 the section and inserting in lieu thereof the following:
13 30 231C.3 CERTIFICATION OF ASSISTED LIVING PROGRAMS.
13 31 1. The department of elder affairs, in cooperation with
13 32 the department of inspections and appeals, shall establish by
13 33 rule in accordance with chapter 17A, a program for
13 34 certification and monitoring of and complaint investigations
13 35 related to assisted living programs. The rules shall be
14 1 formulated in consultation with affected industry,
14 2 professional, and consumer groups. In establishing the
14 3 certification and monitoring program, the department of elder
14 4 affairs, in cooperation with the department of inspections and
14 5 appeals, may adopt by reference any portion of nationally
14 6 recognized standards and rules for assisted living programs.
14 7 The rules shall include specification of recognized

14 8 accrediting agencies.

14 9 2. A person or governmental unit acting severally or
14 10 jointly with any other person or governmental unit shall not
14 11 establish or operate an assisted living program and shall not
14 12 represent an assisted living program to the public as
14 13 certified in this state unless and until the program is
14 14 certified pursuant to this chapter. If an assisted living
14 15 program is voluntarily accredited by a recognized accrediting
14 16 entity, the department of inspections and appeals shall accept
14 17 voluntary accreditation as the basis for certification by the
14 18 department of inspections and appeals. An owner or manager of
14 19 a certified assisted living program shall comply with the
14 20 rules adopted for an assisted living program. An assisted
14 21 living program certified under this section is exempt from the
14 22 requirements of section 135.63 relating to certificate of need
14 23 requirements.

14 24 3. a. Services provided by a certified assisted living
14 25 program may be provided directly by staff of the assisted
14 26 living program, by individuals contracting with the assisted
14 27 living program, or by individuals employed by the tenant or
14 28 with whom the tenant contracts if the tenant agrees to assume
14 29 the responsibility and risk of the employment or the
14 30 contractual relationship.

14 31 b. If a tenant is terminally ill and has elected to
14 32 receive hospice services under the federal Medicare program
14 33 from a Medicare certified hospice program, the certified
14 34 assisted living program shall enter into a written agreement
14 35 with the Medicare certified hospice program under which the
15 1 hospice program assumes full responsibility for the
15 2 professional management of the tenant's hospice care.

15 3 4. The department of inspections and appeals may enter
15 4 into contracts to provide certification and monitoring of
15 5 assisted living programs. The department of inspections and
15 6 appeals shall have full access at any reasonable time to all
15 7 records, materials, and common areas pertaining to the
15 8 provision of services to the tenants of a program during
15 9 certification and monitoring of programs seeking certification
15 10 or currently certified. The department of elder affairs, in
15 11 cooperation with the department of inspections and appeals,
15 12 shall adopt rules in accordance with chapter 17A that require
15 13 recognized accrediting entities to provide the department of
15 14 inspections and appeals with all records and documents
15 15 pertaining to the accrediting, monitoring, and complaint
15 16 process.

15 17 5. The department of elder affairs, in cooperation with
15 18 the department of inspections and appeals, may also establish
15 19 by rule in accordance with chapter 17A special classifications
15 20 for assisted living programs. The rules shall be formulated
15 21 in consultation with affected industry, professional, and
15 22 consumer groups. The special classifications established may
15 23 include a special classification that allows a portion of the
15 24 tenants who require more than part-time or intermittent
15 25 nursing care the opportunity to extend their tenancy in the
15 26 assisted living program.

15 27 6. A department, agency, or officer of this state or of
15 28 any political subdivision shall not pay or approve for payment
15 29 from public funds any amount to an assisted living program for
15 30 an actual or prospective tenant, unless the program holds a
15 31 current certificate issued by the department of inspections
15 32 and appeals and meets all current requirements for
15 33 certification.

15 34 7. An assisted living program shall not conduct or operate
15 35 another business or activity in the program without the prior
16 1 approval of the department of inspections and appeals, if the
16 2 business or activity serves primarily nontenants. The
16 3 department of elder affairs, in cooperation with the
16 4 department of inspections and appeals, and in accordance with
16 5 chapter 17A, shall adopt rules which establish criteria for
16 6 approval of a business or activity to be conducted or operated
16 7 within the program. The rules shall be developed in
16 8 consultation with affected industry, professional, and
16 9 consumer groups.

16 10 8. An assisted living program shall comply with section
16 11 135C.33.

16 12 Sec. 29. Section 231C.4, Code 2003, is amended to read as
16 13 follows:

16 14 231C.4 FIRE AND SAFETY STANDARDS.

16 15 The state fire marshal shall adopt rules, in coordination
16 16 with the department of elder affairs and the department of
16 17 inspections and appeals, relating to the certification ~~or~~
~~16 18 voluntary accreditation~~ and monitoring of the fire and safety

16 19 standards of certified ~~or voluntarily accredited~~ assisted
16 20 living programs.
16 21 Sec. 30. Section 231C.5, Code 2003, is amended to read as
16 22 follows:
16 23 231C.5 COORDINATION OF THE LONG-TERM CARE SYSTEM ==
16 24 TRANSITIONAL PROVISIONS.
16 25 1. ~~Any person representing a program to the public as an~~
16 26 ~~assisted living program prior to July 1, 1996, shall be~~
16 27 ~~granted a temporary certification by the department or shall~~
16 28 ~~be voluntarily accredited and shall meet the requirements of~~
16 29 ~~this chapter within one year of the issuance of the temporary~~
16 30 ~~certification or voluntary accreditation to receive subsequent~~
16 31 ~~certification or voluntary accreditation.~~
16 32 1. An elder group home certified under chapter 231B prior
16 33 to July 1, 2003, shall be exempt from the requirements of this
16 34 chapter. If an elder group home certified under chapter 231B
16 35 prior to July 1, 2003, seeks certification as an assisted
17 1 living program on or after July 1, 2003, the elder group home
17 2 shall be granted a conditional assisted living program
17 3 certification by the department of inspections and appeals for
17 4 a period of one year from the date the conditional certificate
17 5 is issued. At the end of the one-year period, the elder group
17 6 home shall meet the requirements of this chapter to receive
17 7 subsequent certification as an assisted living program.
17 8 2. A hospital licensed pursuant to chapter 135B or a
17 9 health care facility licensed pursuant to chapter 135C may
17 10 operate an assisted living program, located in a distinct part
17 11 of or separate structure under the control of the hospital or
17 12 health care facility, if certified ~~or voluntarily accredited~~
17 13 pursuant to this chapter.
17 14 3. This chapter shall not be construed to require that a
17 15 facility licensed as a different type of facility also comply
17 16 with the requirements of this chapter, unless the facility is
17 17 represented to the public as a certified ~~or voluntarily~~
17 18 ~~accredited~~ assisted living program.
17 19 Sec. 31. Section 231C.6, Code 2003, is amended to read as
17 20 follows:
17 21 231C.6 IOWA ASSISTED LIVING FEES.
17 22 The department of ~~elder affairs~~ inspections and appeals
17 23 shall collect and retain assisted living program certification
17 24 and accreditation related fees as established by rule. Fees
17 25 collected and retained pursuant to this section shall be
17 26 deposited into an assisted living program fund created in the
17 27 state treasury under the authority of the department of
17 28 inspections and appeals and are appropriated to the department
17 29 of inspections and appeals to carry out the purposes of this
17 30 chapter. Amounts deposited in the fund shall not be
17 31 transferred, used, obligated, appropriated, or otherwise
17 32 encumbered except as provided in this section.
17 33 Notwithstanding section 12C.7, subsection 2, interest or
17 34 earnings on moneys deposited into the fund shall be credited
17 35 to the fund. Amounts Notwithstanding section 8.33, amounts
18 1 deposited in the fund that remain unexpended or unencumbered
18 2 at the close of the fiscal year shall remain in the fund for
18 3 utilization as provided in this section for the following
18 4 fiscal year.
18 5 Sec. 32. NEW SECTION. 231C.7 COMPLAINTS.
18 6 1. Any person with concerns regarding the operations or
18 7 service delivery of an assisted living program may file a
18 8 complaint with the department of inspections and appeals. The
18 9 name of the person who files a complaint with the department
18 10 of inspections and appeals and any personal identifying
18 11 information of the person or any tenant identified in the
18 12 complaint shall be kept confidential and shall not be subject
18 13 to discovery, subpoena, or other means of legal compulsion for
18 14 its release to a person other than department's employees
18 15 involved with the complaint.
18 16 2. The department of elder affairs, in cooperation with
18 17 the department of inspections and appeals, shall establish
18 18 procedures for the disposition of complaints received in
18 19 accordance with this section.
18 20 Sec. 33. NEW SECTION. 231C.8 PENALTIES.
18 21 1. A person establishing, conducting, managing, or
18 22 operating any assisted living program without a certificate is
18 23 guilty of a serious misdemeanor. Each day of continuing
18 24 violation after conviction or notice from the department of
18 25 inspections and appeals by certified mail of a violation shall
18 26 be considered a separate offense or chargeable offense. A
18 27 person establishing, conducting, managing, or operating an
18 28 assisted living program without a certificate may be
18 29 temporarily or permanently restrained by a court of competent

18 30 jurisdiction from such activity in an action brought by the
18 31 state.

18 32 2. A person who prevents or interferes with or attempts to
18 33 impede in any way any duly authorized representative of the
18 34 department of inspections and appeals in the lawful
18 35 enforcement of this chapter or of the rules adopted pursuant
19 1 to this chapter is guilty of a simple misdemeanor. As used in
19 2 this subsection, lawful enforcement includes but is not
19 3 limited to:

19 4 a. Contacting or interviewing any tenant of an assisted
19 5 living program in private at any reasonable hour and without
19 6 advance notice.

19 7 b. Examining any relevant records of an assisted living
19 8 program.

19 9 c. Preserving evidence of any violation of this chapter or
19 10 of the rules adopted pursuant to this chapter.

19 11 3. A civil penalty, as established by rule, may apply in
19 12 any of the following situations:

19 13 a. Program noncompliance with one or more regulatory
19 14 requirements has caused or is likely to cause harm, serious
19 15 injury, threat, or death to a tenant.

19 16 b. Program failure or refusal to comply with regulatory
19 17 requirements within prescribed time frames.

19 18 Sec. 34. NEW SECTION. 231C.9 PUBLIC DISCLOSURE OF
19 19 FINDINGS.

19 20 Following a monitoring evaluation or complaint
19 21 investigation of an assisted living program by the department
19 22 of inspections and appeals pursuant to this chapter, the
19 23 department's final findings with respect to compliance by the
19 24 assisted living program with requirements for certification
19 25 shall be made available to the public in a readily available
19 26 form and place. Other information relating to an assisted
19 27 living program that is obtained by the department of
19 28 inspections and appeals which does not constitute the
19 29 department's final findings from a monitoring evaluation or
19 30 complaint investigation of the assisted living program shall
19 31 not be made available to the public except in proceedings
19 32 involving the denial, suspension, or revocation of a
19 33 certificate under this chapter.

19 34 Sec. 35. NEW SECTION. 231C.10 DIRECTOR NOTIFIED OF
19 35 CASUALTIES.

20 1 The director of inspections and appeals shall be notified
20 2 within twenty-four hours, by the most expeditious means
20 3 available, of any accident causing substantial injury or
20 4 death, and any substantial fire or natural or other disaster
20 5 occurring at or near an assisted living program.

20 6 Sec. 36. NEW SECTION. 231C.11 RETALIATION BY ASSISTED
20 7 LIVING PROGRAM PROVIDER PROHIBITED.

20 8 1. An assisted living program provider shall not
20 9 discriminate or retaliate in any way against a tenant,
20 10 tenant's family, or an employee of the program who has
20 11 initiated or participated in any proceeding authorized by this
20 12 chapter. An assisted living program provider that violates
20 13 this section is subject to a penalty as established by
20 14 administrative rule in accordance with chapter 17A and to be
20 15 assessed and collected by the department of inspections and
20 16 appeals and paid into the state treasury to be credited to the
20 17 general fund of the state, or to immediate revocation of the
20 18 program's certificate.

20 19 2. Any attempt to evict, from an assisted living program,
20 20 a tenant by whom or upon whose behalf a complaint has been
20 21 submitted to the department under section 231C.7, within
20 22 ninety days after the filing of the complaint or the
20 23 conclusion of any proceeding resulting from the complaint,
20 24 raises a rebuttable presumption that the action was taken by
20 25 the program provider in retaliation for the filing of the
20 26 complaint, except in situations in which the tenant is evicted
20 27 due to occupancy and transfer criteria.

20 28 Sec. 37. NEW SECTION. 231C.12 DENIAL, SUSPENSION, OR
20 29 REVOCATION == CONDITIONAL OPERATION.

20 30 1. The department of inspections and appeals may deny,
20 31 suspend, or revoke a certificate in any case where the
20 32 department of inspections and appeals finds that there has
20 33 been a substantial or repeated failure on the part of the
20 34 assisted living program to comply with this chapter or the
20 35 rules, or minimum standards adopted under this chapter, or for
21 1 any of the following reasons:

21 2 a. Cruelty or indifference to assisted living program
21 3 tenants.

21 4 b. Appropriation or conversion of the property of an
21 5 assisted living program tenant without the tenant's written

21 6 consent or the written consent of the tenant's legal guardian.
21 7 c. Permitting, aiding, or abetting the commission of any
21 8 illegal act in the assisted living program.
21 9 d. Obtaining or attempting to obtain or retain a
21 10 certificate by fraudulent means, misrepresentation, or by
21 11 submitting false information.
21 12 e. Habitual intoxication or addiction to the use of drugs
21 13 by the applicant, administrator, executive director, manager,
21 14 or supervisor of the assisted living program.
21 15 f. Securing the devise or bequest of the property of a
21 16 tenant of an assisted living program by undue influence.
21 17 g. Failure or neglect to maintain a continuing education
21 18 and training program for all personnel employed in the program
21 19 assisted living.
21 20 h. Founded dependent adult abuse as defined in section
21 21 235B.2.
21 22 i. For any other reason as provided by law or
21 23 administrative rule.
21 24 2. The department of inspections and appeals may as an
21 25 alternative to denial, suspension, or revocation conditionally
21 26 issue or continue a certificate dependent upon the performance
21 27 by the assisted living program of reasonable conditions within
21 28 a reasonable period of time as set by the department of
21 29 inspections and appeals so as to permit the program to
21 30 commence or continue the operation of the program pending full
21 31 compliance with this chapter or the rules adopted pursuant to
21 32 this chapter. If the assisted living program does not make
21 33 diligent efforts to comply with the conditions prescribed, the
21 34 department of inspections and appeals may, under the
21 35 proceedings prescribed by this chapter, suspend, or revoke the
22 1 certificate. An assisted living program shall not be operated
22 2 on a conditional certificate for more than one year.
22 3 Sec. 38. NEW SECTION. 231C.13 NOTICE == HEARINGS.
22 4 1. The denial, suspension, or revocation of a certificate
22 5 shall be effected by delivering to the applicant or
22 6 certificate holder by restricted certified mail or by personal
22 7 service a notice setting forth the particular reasons for such
22 8 action. Such denial, suspension, or revocation shall become
22 9 effective thirty days after the mailing or service of the
22 10 notice, unless the applicant or certificate holder, within
22 11 such thirty-day period, requests a hearing, in writing, of the
22 12 department of inspections and appeals, in which case the
22 13 notice shall be deemed to be suspended.
22 14 2. The denial, suspension, or revocation of a certificate
22 15 may be appealed in accordance with rules adopted by the
22 16 department of inspections and appeals in accordance with
22 17 chapter 17A.
22 18 3. When the department of inspections and appeals finds
22 19 that an immediate danger to the health or safety of tenants of
22 20 an assisted living program exists which requires action on an
22 21 emergency basis, the department of inspections and appeals may
22 22 direct removal of all tenants of an assisted living program
22 23 and suspend the certificate prior to a hearing.
22 24 Sec. 39. NEW SECTION. 231C.14 NURSING ASSISTANT AND
22 25 MEDICATION AIDE == CERTIFICATION.
22 26 The department of inspections and appeals, in cooperation
22 27 with other appropriate agencies, shall establish a procedure
22 28 to allow nursing assistants or medication aides to deem work
22 29 within an assisted living program as credit toward sustaining
22 30 professional certification.
22 31 Sec. 40. Section 235B.3, subsection 2, paragraph d, Code
22 32 2003, is amended to read as follows:
22 33 d. A person who performs inspections of elder group homes
22 34 for the department of ~~elder affairs~~ inspections and appeals
22 35 and a resident advocate committee member assigned to an elder
23 1 group home pursuant to chapter 231B.
23 2 Sec. 41. Section 231.61 and chapter 231A, Code 2003, are
23 3 repealed.
23 4 Sec. 42. TRANSITION OF STAFF. All employees of the
23 5 department of elder affairs performing functions related to
23 6 certification and monitoring of or complaint investigations
23 7 related to assisted living programs as of June 30, 2003, shall
23 8 become employees of the department of inspections and appeals
23 9 without loss of classification, pay, or benefits, effective
23 10 July 1, 2003. All employees of the department of elder
23 11 affairs performing functions related to affordable assisted
23 12 living as of June 30, 2003, shall become employees of the Iowa
23 13 finance authority without loss of classification, pay, or
23 14 benefits, effective July 1, 2003.
23 15 Sec. 43. IMPLEMENTATION == CONTINGENCY. This Act takes
23 16 effect only when the general assembly appropriates funding and

23 17 specifically states in the language of the appropriation that
23 18 the funding is sufficient, based upon an estimate on file with
23 19 the house of origin of the Act, for the implementation and
23 20 administration of the Act. The department of elder affairs
23 21 shall notify the Code editor when sufficient funds are
23 22 appropriated to implement and administer this Act.

23 23 EXPLANATION

23 24 This bill establishes regulatory provisions for adult day
23 25 services and assisted living programs.

23 26 Currently, provisions relating to regulation of adult day
23 27 services are included in Code section 231.61, which is
23 28 repealed in the bill. Under that section, regulation of adult
23 29 day services consisted of development of a system of oversight
23 30 by affected state agencies, industry representatives, and
23 31 consumers under the department of elder affairs.

23 32 Under the bill, a new Code chapter, 231D, is created to
23 33 provide for the regulation of adult day services under the
23 34 department of elder affairs with the cooperation of the
23 35 department of inspections and appeals. The bill directs the
24 1 department of elder affairs, with the cooperation of the
24 2 department of inspections and appeals, to establish a program
24 3 for certification and monitoring of and complaint
24 4 investigations related to adult day services. The rules and
24 5 standards are to be formulated in consultation with affected
24 6 industry, professional, and consumer groups. Under the bill,
24 7 all adult day services programs are required to be certified
24 8 by the department of inspections and appeals. The bill
24 9 establishes application and fee requirements; provides a
24 10 procedure for denial, suspension, or revocation of
24 11 certification; provides for the director of inspections and
24 12 appeals to be notified of casualties relative to an adult day
24 13 services program; provides a complaint process; provides for
24 14 disclosure of final findings by the department of inspections
24 15 and appeals related to monitoring evaluations or complaint
24 16 investigations; provides penalties for noncompliance with
24 17 certification requirements and enforcement of the provisions
24 18 of the chapter; prohibits retaliation by a provider of adult
24 19 day services; provides for nursing assistants and medication
24 20 aides to deem work within adult day services programs as
24 21 credit toward professional certification; provides for fire
24 22 and safety standards; and provides transition provisions.

24 23 The bill provides for regulation of assisted living
24 24 programs by directing the department of elder affairs, in
24 25 cooperation with the department of inspections and appeals, to
24 26 establish, by rule, a program for certification and monitoring
24 27 of and complaint investigations related to assisted living
24 28 programs. The rules are to be formulated in consultation with
24 29 affected industry, professional, and consumer groups. If an
24 30 assisted living program is voluntarily accredited by a
24 31 recognized accrediting entity, the department of inspections
24 32 and appeals is directed to accept voluntary accreditation as
24 33 the basis for certification by the department. The bill
24 34 provides specifically that if a tenant of an assisted living
24 35 program is terminally ill and has elected to receive hospice
25 1 services under the federal Medicare program from a Medicare=
25 2 certified hospice program, the certified assisted living
25 3 program is to enter into a written agreement with the hospice
25 4 program under which the hospice program assumes full
25 5 responsibility for the professional management of the tenant's
25 6 hospice care.

25 7 The bill specifically provides for the adoption of rules by
25 8 the department of elder affairs, in cooperation with the
25 9 department of inspections and appeals, to require recognized
25 10 accrediting entities to provide the department of inspections
25 11 and appeals with all records and documents pertaining to the
25 12 accrediting, monitoring, and complaint processes.

25 13 The bill provides that the department of elder affairs, in
25 14 cooperation with the department of inspections and appeals,
25 15 may also establish by rule special classifications for
25 16 assisted living programs, including a special classification
25 17 to allow a portion of the tenants who require more than part=
25 18 time or intermittent nursing care the opportunity to extend
25 19 their tenancy in the assisted living program.

25 20 The bill provides that an elder group home that seeks
25 21 certification as an assisted living program on or after July
25 22 1, 2003, is to be granted conditional certification as an
25 23 assisted living program for one year from the date of issuance
25 24 of the conditional certification. Thereafter, the elder group
25 25 home must meet all requirements of an assisted living program
25 26 to be certified as an assisted living program. The bill
25 27 establishes a complaint procedure; establishes penalties for

25 28 violations of the certification requirements for assisted
25 29 living facilities; provides for public disclosure of final
25 30 findings by the department of inspections and appeals related
25 31 to monitoring evaluations or complaint investigations;
25 32 provides for the notification of the director of inspections
25 33 and appeals of casualties in an assisted living program;
25 34 prohibits retaliation by an assisted living program provider
25 35 against persons who participate in a proceeding under the
26 1 chapter; provides a procedure for the denial, suspension, or
26 2 revocation of certification and for conditional operation; and
26 3 provides for nursing assistants and medication aides to deem
26 4 work within adult day services programs as credit toward
26 5 professional certification.
26 6 The bill also provides that elder group homes certified
26 7 prior to July 1, 2003, are to comply with the provisions under
26 8 Code chapter 231B relating to elder group homes, but that
26 9 beginning July 1, 2003, applications for certification as an
26 10 elder group home are not to be accepted.
26 11 The bill repeals Code chapter 231A, relating to elder
26 12 family homes.
26 13 LSB 1205DP 80
26 14 pf/cl/14.2